

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ELIJAH BURKS,

1:23-cv-4154 (NLH)

Petitioner,

**MEMORANDUM OPINION &
ORDER**

v.

WARDEN,

Respondent.

APPEARANCES:

Elijah Burks
63232-050
Philadelphia
Federal Detention Center
P.O. Box 562
Philadelphia, PA 19106

Petitioner pro se

HILLMAN, District Judge

WHEREAS, on April 27, 2012, this Court sentenced Petitioner Elijah Burks to a term of 108 months in BOP custody for possession of a weapon by a convicted felon, 18 U.S.C. § 922(g)(1). United States v. Burks, No. 11-cr-0627 (D.N.J.) ("Crim. Case") ECF No. 23. The sentence was to be served consecutively to his state sentence from the New Jersey Superior Court, Camden County Indictment # 09-05-1865, id. The Court also imposed a 3-year term of supervised release, id.; and

WHEREAS, Petitioner's supervised release term began on

September 13, 2021, Crim. Case ECF No. 34; and

WHEREAS, on March 28, 2022, Probation filed a petition asking the Court to issue a warrant because Petitioner had been arrested on another offense in Camden County on March 26, 2022, id. The Court issued an arrest warrant on March 28, 2022, Crim. Case No. 35; and

WHEREAS, Magistrate Judge Ann Marie Donio conducted the initial appearance on April 5, 2022, Crim. Case No. 36. Petitioner was ordered detained, Crim. Case No. 40; and

WHEREAS, this Court conducted a hearing on May 18, 2023, at which time Petitioner pled guilty to the violation, Crim. Case No. 51; and

WHEREAS, the Court revoked Petitioner's supervised release on June 15, 2023 and sentenced him "to be imprisoned for a term of 24 months which shall run consecutively to his 364 day custodial sentence imposed . . . in N.J. Superior Court, Camden County on June 9, 2023 under Docket Number CAM-22-000990-001." Crim. Case No. 53 at 2. The Court entered the judgment of conviction on June 20, 2023, id.; and

WHEREAS, on July 31, 2023, Petitioner, who is currently detained in the Philadelphia Federal Detention Center, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the Eastern District of Pennsylvania ("Eastern District"). ECF No. 1; see also Burks v.

Warden, No. 23-cv-02889 (E.D. Pa.); and

WHEREAS, Petitioner asserted that he would not have pled guilty to the supervised release violation if he had known that the federal sentence would be consecutive to his state sentence, ECF No. 1 at 3; and

WHEREAS, on August 3, 2023, the Honorable Mark A. Kearney, E.D. Pa., transferred the petition to this District because “[a] petitioner’s challenge to the validity of a sentence should be presented to the sentencing court rather than the court in the district of confinement.” ECF No. 3 at 1 n.1; and

WHEREAS, Petitioner filed an identical § 2241 petition in this Court on the same date that he filed the § 2241 petition in the Eastern District, Burks v. Warden, FDC Philadelphia, No. 23-cv-4082 (D.N.J.); and

WHEREAS, the two § 2241 petitions are identical. The Court will dismiss this action that was transferred from the Eastern District as duplicative of Civil Action 23-4082. The Court will continue reviewing Petitioner’s claims in Civil Action 23-4082,

THEREFORE, IT IS on this 10th day of August, 2023

ORDERED that the petition for writ of habeas corpus, ECF No. 1, shall be, and the same hereby is, DISMISSED AS DUPLICATIVE of Civil Action 23-4082. The Court will conduct its review of Petitioner’s claims in that action; and it is finally

ORDERED that the Clerk shall send a copy of this Order to
Petitioner by regular mail and mark this case CLOSED.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.